

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

OHIO CASUALTY INSURANCE COMPANY,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 3:06-cv-977-MEF
)	
MANIFOLD CONSTRUCTION, LLC, et al.,)	
)	
Defendants.)	

**BRIEF IN SUPPORT OF MOTION TO CONTINUE THE TIME FOR FILING OF THE
REPORT OF PARTIES' PLANNING MEETING**

COME NOW the Defendants, Whittelsey Properties, Inc., C.S. Whittelsey, III, and C.S. Whittelsey, IV (collectively referred to herein sometimes as "Whittelsey"), and in support of Whittelsey's motion to continue the time for filing of the report of the parties' planning meeting pursuant to Fed. R. Civ. P. 26(f), files this brief.

INTRODUCTION

On the 31st day of October, 2006, Plaintiff, Ohio Casualty Insurance Company (hereinafter "Ohio Casualty"), filed its complaint for declaratory judgment to determine the rights and obligations of Ohio Casualty under a policy of insurance it issued to Manifold Construction, LLC and Jack Manifold, co-defendants in the present case. On the 4th day of December, 2006, Whittelsey, by and through their attorneys, accepted service of Ohio Casualty's complaint.

On the 4th day of December, 2006, Whittelsey filed their motion to dismiss Ohio Casualty's complaint with a brief in support of said motion. On the 8th day of December, 2006, this Honorable Court ordered Ohio Casualty to respond to Whittelsey's motion on or before December 20, 2006, and allowed Whittelsey to file a reply brief to said response on or before

December 29, 2006. On the 20th day of December, 2006, Ohio Casualty filed its response to Whittelsey's motion. On the 28th day of December, 2006, Whittelsey filed their reply brief to the response filed by Ohio Casualty.

STANDARD OF REVIEW

The denial or grant of a motion to continue is reviewed for abuse of discretion. See Zafar v. U.S. Att'y Gen., 461 F.3d 1357 (11thCir. 2006).

ARGUMENT

Pursuant to Fed. R. Civ. P. 16(b) a scheduling "order shall issue as soon as practicable but in any event within 90 days after the appearance of a defendant..." Pursuant to Fed. R. Civ. P. 26(f) the parties are to conduct a planning meeting as soon as practicable or "at least 21 days before a scheduling conference is held or a scheduling order is due under Rule 16(b)."

Therefore, a report of the parties planning meeting pursuant to Fed. R. Civ. P. 26(f) is due, at the latest, by February 13, 2007.

The parties were scheduled to conduct a meeting pursuant to Fed. R. Civ. P. 26(f) on January 23, 2007; however, counsel for Whittelsey became concerned that setting dates, at this time, might be a little unrealistic as motions to dismiss the complaint are currently pending. Furthermore, Whittelsey was concerned about the costs associated with discovery being incurred that, in the end, would be unnecessary if said motions to dismiss were granted. As a report of the parties' planning meeting is not due until February 13, 2007, counsel for Whittelsey expressed his concerns to counsel for Ohio Casualty and both agreed to postpone the planning meeting until a ruling is received on Whittelsey's motion to continue the time for filing of the report of the parties' planning meeting.

The parties would not be prejudiced by such a continuance. In fact, the parties would be spared the expense of conducting discovery that may not be necessary.

WHEREFORE, THE PREMISES CONSIDERED, Defendants pray this Honorable Court will continue the time for filing of the report of the parties' planning meeting pursuant to Fed. R. Civ. P. 26(f) until after this Honorable Court has ruled on the pending motions to dismiss.

Respectfully submitted this the 23rd day of January, 2007.

WHITTELSEY, WHITTELSEY & POOLE, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document on the parties listed below electronically or by placing a copy of the same in the United States mail, postage prepaid, to their correct address on this the 23rd day of January, 2007.

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